(19,304.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 229.

HENRY VAN REED, PLAINTIFF IN ERROR,

vs.

THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 28, 1905.

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a Court of Appeals.

HENRY VAN REED, Plaintiff-Appellant,
against
THE PEOPLE'S NATIONAL BANK OF LEBANON, PENNSYLVANIA,
Defendant-Respondent.

Papers on Appeal from Order.

Carrington & Pierce, attorneys for plaintiff, 115 Broadway, borough of Manhattan, New York city.
Moore, Wallace & Dudley, attorneys for defendant for the purposes of this motion only, 44 Cedar street, borough of Manhattan, New York city.

1 New York Supreme Court, Appellate Division, First Department.

Summons.

Supreme Court.

HENRY VAN REED, Plaintiff,
against
THE PEOPLE'S NATIONAL BANK OF LEBANON, Pennsylvania, Defendant.
Summons. Trial Desired in New York County.

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Aug. 5, 1901.

CARRINGTON & PIERCE,
Plaintiff's Attorneys.

Post office address and office, No. 115 Broadway, borough of Manhattan, New York city.

2 (Warrant of Attachment.)

The People of the State of New York to the sheriff of the county of New York, Greeting:

Whereas, an application has been made to the judge granting this warrant by Henry Van Reed, plaintiff, for a warrant of attach-

ment against the property of The People's National Bank of Lebanon, Pennsylvania, the defendant, in an action in the supreme court of the State of New York, in the county of New York, and it appearing by affidavit to the satisfaction of the judge granting this warrant that one of the causes of action specified in section 635 of the Code of Civil Procedure exists against the defendant to recover a sum of money only, to wit: the sum of two hundred and fifty dollars as damages for breach of contract, other than a contract to marry, and the affidavits showing that the defendant is a foreign corporation and the plaintiff having also given the undertaking required by law:

Now you are hereby commanded to attach and safely keep so much of the property within your county which the defendant, The People's National Bank of Lebanon, Pennsylvania, has, or which it may have at any time before final judgment in the action, as will satisfy plaintiff's demand of two hundred and fifty dollars, together with costs and expenses, and that you proceed hereon in the manner required of you by law.

Witness Hon. Leonard A. Giegerich, justice of the supreme court, at the New York county court house, in the city of New York, this sixth day of September, in the year one thousand nine hundred and one.

L. A. GIEGERICH,
Justice of the Supreme Court of
the State of New York.

CARRINGTON & PIERCE,
Plaintiff's Attorneys.

3 (Affidavit of Henry Van Reed.)

(Same Title.)

COUNTY OF NEW YORK, *ss:*

Henry Van Reed, being duly sworn, says: I am the plaintiff in this action. The summons in the action has been issued herein and is hereto annexed; I am a resident of the city and county of New York. The defendant is a national bank organized under the banking laws of the United States, and located and doing business at Lebanon, Pennsylvania. A cause of action exists in my favor against the defendant to recover a sum of money only as damages for a breach of contract, other than a contract to marry, arising out of the facts set forth in the affidavit of James W. M. Newlin, hereto annexed. Said cause of action was assigned to me on or about the 18th day of July, 1901, and I have since been and still am the owner thereof. No part of said claim has been paid, and I am entitled to recover from the defendant herein the sum of two hundred and fifty ($250) dollars over and above all counter-claims or offsets known to me.

No previous application has been made for a warrant of attachment in this action.

HENRY VAN REED.

Sworn to before me this 6th day of September, 1901.

MAXWELL DAVIDSON,
Notary Public (No. 119), New York County.

4 (Affidavit of James W. M. Newlin.)

(Same Title.)

STATE OF NEW HAMPSHIRE, }
County of Grafton, } ss.:

James W. M. Newlin, of Philadelphia, Pa., being duly sworn, says: I am the assignor of the claim sued herein. A cause of action exists in favor of the plaintiff against the defendant to recover a sum of money only as damages for breach of contract, other than a contract to marry, arising out of the following facts:

I am an attorney at law, duly admitted and authorized to practice law in the State of Pennsylvania. On the 6th day of March, 1899, at Philadelphia, Pa., I was employed as such attorney by the defendant, to collect a note for $5,000, held by the defendant, made by the Singerly Pulp and Paper Company, to the order of William M. Singerly, and endorsed by said William M. Singerly. At the time of such employment, the defendant paid me a retaining fee of $100, and it was agreed by and between the defendant and myself that I should receive a further contingent fee of 25 per cent. upon the amount recovered. Between March 6, 1899, and May 15, 1901, I rendered various services to the defendant at defendant's request in the course of my said employment. Said services consisted of an examination on the condition of the William M. Singerly estate (said William M. Singerly having died), the validity of the claims made by certain creditors for preference, the presentation of the claims and various negotiations had and advice given during the course of the proceedings. An aggregate of at least five days' time was spent by me in the course of said employment.

5 I am familiar with the value of legal services. The services rendered by me as aforesaid were of the value (over and above said $100 paid me), of the sum of two hundred and fifty ($250) dollars.

On or about May 15, 1901, the defendant decided to proceed no further in the matter, and so notified me, and terminated my said employment.

That thereupon by reason of the facts aforesaid, there became due and owing me from the defendant, the sum of $250 for the services rendered by me as aforesaid. That no part of the same has been

paid and there are no offsets or counterclaims thereto known to me. That thereafter and before the commencement of this action, I assigned my said claim to the plaintiff, who thereupon became the lawful owner thereof. During my employment by the defendant, I became well acquainted with its organization and its officers. The defendant is a national bank organized under the banking laws of the United States, and located and doing business at Lebanon, Lebanon county, Pennsylvania.

JAMES W. M. NEWLIN.

Sworn to before me this 6th day of August, 1901.
[SEAL.] GEO. W. WELLS,
Notary Public.

Certificate of Notary's Appointment.

THE STATE OF NEW HAMPSHIRE, County of Grafton, } ss:

I, Dexter D. Dow, clerk of the superior court of the State of New Hampshire, for said county of Grafton, a court of record, do hereby certify that Geo. W. Wells, Esq., before whom the foregoing and annexed instrument was subscribed and sworn to, was, at the time thereof, a notary public within and for the State of New
6 Hampshire, residing in said county of Grafton, duly appointed, commissioned and sworn and duly authorized to administer oaths and take the acknowledgement of deeds, and to all whose official acts as such, full faith and credit are due; and further, that I am well acquainted with his handwriting, and verily believe that the foregoing signature is genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, at Haverhill, this 7th day of August, A. D. 1901.

[Seal of the Superior Court.]

DEXTER D. DOW, Clerk.

Notice of Special Appearance.

(Same Title.)

SIRS: Please take notice that we appear on behalf of the People's National Bank of Lebanon, Pennsylvania, as their counsel for the purpose, and only for the purpose, of moving to vacate the attachment granted herein, and that the said, The People's National Bank of Lebanon, Pennsylvania, does not appear generally in this action.

Dated September 11, 1901.

Yours, &c., MOORE, WALLACE & DUDLEY,
44 Cedar Street, Borough of Manhattan, New York City.

To Carrington & Pierce, Esqs., attorneys for plaintiff, 115 Broadway, borough of Manhattan, New York city.

7 Notice of Motion to Vacate Warrant.

(Same Title.)

SIRS: Please take notice that, upon the warrant of attachment granted herein on the sixth day of September, 1901, and the papers upon which it was granted, the undersigned will move this court at a special term, part I., thereof, to be held at the county court house, in the borough of Manhattan, city of New York, on the 16th day of September, 1901, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order vacating the said warrant of attachment and for such other and further relief as may be just, such relief being asked upon the following ground, among others, in that the said attachment was granted against a national bank organized and existing under and by virtue of the laws of the United States, contrary to the statute of the United States in such case made and provided, together with the costs of this motion.

Dated September 11, 1901.

MOORE, WALLACE & DUDLEY,
Attorneys for Defendant for the Purpose of This Motion Only, 44 Cedar Street, Borough of Manhattan, New York City.

To Carrington & Pierce, Esqs., attorneys for plaintiff, 115 Broadway, borough of Manhattan, New York city.

8 Order Denying Motion to Vacate.

At special term, part I., of the supreme court, held at the county court house, in the county of New York, on the 23rd day of September, 1901.

Present: Hon. David McAdam, justice.

HENRY VAN REED
against
THE PEOPLE'S NATIONAL BANK OF LEBANON, PENNSYLVANIA.

On reading the warrant of attachment herein and the papers on which the same was granted, viz., affidavit of Henry Van Reed, verified September 6, 1901; affidavit of James W. M. Newlin, verified August 6, 1901; certificate of Dexter D. Dow, clerk thereto attached; summons dated August 5, 1901; undertaking of American Surety Company, dated September 6, 1901; and on reading and filing notice of motion to set the attachment aside, dated September 11, 1901; and hearing Moore, Wallace & Dudley for said motion, and Carrington & Pierce, attorneys for the plaintiff, opposed,

Now, on motion of Carrington & Pierce, it is
Ordered, that the said motion to vacate and set aside said attachment be and the same is hereby denied, with ten dollars costs.
Ent.

D. McA., J.

(Filed and entered September 23, 1901.)

9 Memorandum Opinion of Mr. Justice McAdam.

VAN REED
v.
PEOPLE'S NAT. BANK OF LEBANON, PA.

In opposition to my own judgment (see 124 U. S. R., 721) and upon the authority of the cases decided by the courts of our own State, the motion to vacate the attachment will be denied, with $10 costs (81 N. Y., 385; 93 *id.*, 371). The question ought to be settled by the appellate division.

Notice of Appeal.

(Same Title.)

SIRS: Please take notice that the defendant herein appeals to the appellate division of the supreme court for the first judicial department, from the order of the supreme court entered herein in the office of the clerk of said court, in and for the county of New York, on the 23rd day of September, 1901, and from each and every part thereof.

Yours, &c., MOORE, WALLACE & DUDLEY,
Attorneys for Defendant for the Purposes of this Motion Only, 44 Cedar Street, Borough of Manhattan, New York City.

To Messrs. Carrington & Pierce, attorneys for plaintiff, 115 Broadway, borough of Manhattan, New York city; William Sohmer, Esq., clerk, &c.

10 Order of Reversal.

At a term of the appellate division of the supreme court, first department, held at the appellate division court house, county of New York, on the 13th day of December, 1901.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. Chester B. McLaughlin, Hon. Frank C. Laughlin, associate justices.

HENRY VAN REED, Respondent,
against
THE PEOPLE'S NATIONAL BANK OF LEBANON, PENNSYLVANIA, Appellant.

The defendant above named having appealed to the appellate division of the supreme court, first department, from the order made by the special term, New York county, dated September 23rd, 1901, and entered in the office of the clerk of New York county, September 23rd, 1901, denying defendant's motion to vacate the attachment granted herein and said appeal having come on to be heard at the November term, 1901;

Now, after hearing Percy S. Dudley, appearing specially for the appellant, and Carlton B. Pierce, appearing for the respondent, it appearing that the appellant is a national bank, claiming exemption from attachment under sec. 5242 of the U. S. Revised
11 Statutes, and it appearing that respondent claims the right to such attachment and the jurisdiction thereby acquired under section 4 of the act of Congress of July 12, 1882, and due deliberation having been had, and the court having decided against the claim of the respondent and in favor of that of the appellant,

Now, on motion of Moore, Wallace & Dudley, appearing specially as attorneys for the appellant, it is

Ordered that said order appealed from be and the same is hereby reversed with ten dollars costs and disbursements and that the attachment granted herein be and the same is hereby vacated with ten dollars costs.

Order Allowing Appeal to Court of Appeals.

At a term of the appellate division of the supreme court, first department, held at the appellate division, court house, in the county of New York, on the 7th day of February, 1902.

Present: Hon. Charles H. Van Brunt, presiding justice; Edward Patterson, George L. Ingraham, Edward W. Hatch, Frank C. Laughlin, associate justices.

HENRY VAN REED
against
THE PEOPLE'S NATIONAL BANK OF LEBANON, PENNSYLVANIA.

A motion having been made by the above named plaintiff for leave to appeal to the court of appeals from the order of this
12 court dated Dec. 13, 1901, and said motion having duly come on to be heard, and after hearing Carlton B. Pierce of counsel for the plaintiff, no one appearing in opposition, and upon reading and filing the affidavit of Carlton B. Pierce, verified January

22, 1902, and notice of motion thereto annexed, with admission of due service thereon on the attorneys for the defendant, and due deliberation having been had, it is

On motion of Carrington & Pierce, attorneys for the plaintiff,

Ordered that plaintiff's said motion for leave to appeal to the court of appeals from the said order of this court herein dated Dec. 13, 1901, and entered in the office of the clerk of the county of New York, January 4th, 1902, be and the same hereby is granted and said appeal allowed; and this court hereby certifies to the court of appeals the following questions which have arisen herein and which in its opinion ought to be reviewed by the court of appeals, viz:

1. Is the defendant exempt from attachment before judgment under section 5242 U. S. Revised Statutes?

2. Are the rights claimed by the plaintiff, to attachment against the defendant before judgment, and to the jurisdiction thereby acquired, preserved and given by sec. 4 of the act of Congress of July 12, 1882?

Notice of Appeal to Court of Appeals.

(Same Title.)

Please take notice that the plaintiff appeals to the court of appeals from the order of the appellate division, first department,
13 herein entered in the office of the clerk of the county of New York, on the 4th day of January, 1902, reversing the order of the special term and vacating the attachment granted herein, with costs.

Dated, New York, April 30th, 1902.

CARRINGTON & PIERCE,
Attorneys for Plaintiff, 115 Broadway, New York City.

To Messrs. Moore, Wallace & Dudley, attorneys for def't, appearing specially; to the clerk of the county of New York.

Opinion of Appellate Division.

(Same Title.)

Appeal by the defendant, The People's National Bank of Lebanon, Pennsylvania, from an order of the supreme court, made at the New York special term and entered in the office of the clerk of the county of New York on the 23d day of September, 1901, denying the defendant's motion to vacate a warrant of attachment theretofore granted in the action.

Percy S. Dudley, for the appellant.

Carlton B. Pierce, for the respondent.

LAUGHLIN, J.:

The action is brought to recover for legal services, the plaintiff being the assignee of the claim. The warrant of attachment was

granted on the ground that the action is on contract to recover a sum of money from a foreign corporation. The defendant appeared specially and moved to vacate the warrant of attachment on the ground that it was issued in violation of section 5242 of the
14 Revised Statutes of the United States, which provides as follows: "All transfers of the notes, bonds, bills of exchange or other evidences of debt owing to any national banking association, or of deposits to its credit, all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets, in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction, or execution shall be issued against such association or its property before final judgment in any suit, action, or proceeding in any State, county, or municipal court."

There being no evidence that the defendant is insolvent its solvency is to be presumed. (Market Nat. Bank of New York *v.* Pacific Nat. Bank of Boston, 64 How. Pr. 1.)

It was held in Robinson *v.* National Bank of Newberne (81 N. Y. 385) that this statute does not prohibit the issuing of an attachment against a solvent national bank; and in Raynor *v.* Pacific National Bank (93 N. Y. 371) the court held that the effect of the statute was to prohibit an attachment against a national bank which was insolvent or had committed an act of insolvency.

Subsequent to these decisions, Chief Justice Waite, in delivering the opinion of the court in the case of Pacific National Bank *v.* Mixter, (124 U. S. 721), in construing section 5242 of the United States Revised Statutes, after stating that said section was a re-enactment of section 52 of the original act (13 U. S. Stat. at Large, 115) and the amendment of section 57 adopted in 1873 consolidated, said:
15 "The fact that the amendment of 1873 in relation to attachments and injunctions in State courts was made a part of § 5242 shows the opinion of the revisers and of Congress that it was germane to the other provision incorporated in that section, and was intended as an aid to the enforcement of the principle of equality among the creditors of an insolvent bank. But however that may be, it is clear to our minds that, as it stood originally as part of § 57 after 1873, and as it stands now in the Revised Statutes, it operates as a prohibition upon all attachments against national banks under the authority of the State courts. That was evidently its purpose when first enacted, for then it was a part of a section which, while providing for suits in the courts of the United States or of the State, as the plaintiff might elect, declared in express terms that if the suit was begun in a State court no attachment should issue until after judgment. The form of its re-enactment in

the Revised Statutes does not change its meaning in this particular. It stands now, as it did originally, as the paramount law of the land that attachments shall not issue from State courts against national banks, and writes into all State attachments laws an exception in favor of national banks. Since the act of 1873 all the attachment laws of the State must be read as if they contained a provision in express terms that they were not to apply to suits against a national bank."

That was a suit in equity by the receiver of a national bank against attaching creditors and sureties on bonds given by the bank to dissolve attachments, to reduce to his possession securities held by the sureties for their protection against liability and to restrain the attachment creditors from enforcing the attachment bonds on the ground that the attachments were unauthorized, illegal and void. At the time the attachments were issued the bank was embarrassed, its doors were closed and it was in charge of a bank examiner. It is, therefore, contended that the question as to whether this statute prohibited attachments against solvent national
16 banks was not necessarily involved in the decision of the case. While this may be conceded, it is evident that the opinion relates to national banks generally, whether solvent or insolvent, and seems to have been intended as an authoritative construction of the statute. We do not find that this case has been modified or distinguished by the Supreme Court. In Earle *v.* Pennsylvania (178 U. S. 449), which was not an action against a national bank, but was a case where an attachment had been issued against the bank as garnishee, Justice Harlan, in delivering the opinion of the court, said: "Sections 5234, 5235 and 5236 above quoted have reference to the affairs and property of national banks in the hands of receivers and the administration of its assets by the comptroller; and the words in section 5242, 'no attachment, injunction or execution shall be issued against such association or its property before final judgment in any suit, action or proceeding in any State, county or municipal court,' are to be construed in connection with the previous parts of the same section declaring null and void certain transfers, assignments, deposits and payments made after the commission by the bank 'of an act of insolvency, or in contemplation thereof,' with the intent to prevent the application of the bank's assets in the manner prescribed by Congress, or with a view to the preference by the bank of one creditor to another. Whatever may be the scope of section 5242, an attachment sued out against the bank as *garnishee* is not an attachment against the bank or its property, nor a suit against it, within the meaning of that section. It is an attachment to reach the property or interests held by the bank for others."

In that opinion no reference was made to the case of Pacific National Bank *v.* Mixter (*supra*), and we think, therefore, that the court did not intend to modify or limit its former decision. The appellant relies on the case of Bank of Montreal *v.* Fidelity Nat. Bank

(49 Hun., 607; 112 N. Y. 667), which was affirmed by the
17 court of appeals without an opinion on the authority of Pacific National Bank *v.* Mixter; but it appears from an examination of the record in the former case that the bank was insolvent at the time the attachment was issued, and that the motion to vacate the attachment was made by its receiver. The case fell clearly within the doctrine previously announced by the court of appeals in Raynor *v.* Pacific Nat. Bank (*supra*). Under these circumstances the mere fact that the affirmance of the order vacating the attachment was placed upon the authority of Pacific National Bank *v.* Mixter (*supra*) is no indication that the court of appeals intended to overrule its former decision and acquiesce fully in the broad construction of the statute by the Supreme Court of the United States. We have, therefore, no controlling precedent in this State since the Federal decision last mentioned. Our attention has not been called to any case arising since the decision of Pacific National Bank *v.* Mixter (*supra*), where the highest court of any State has attempted to distinguish or refrain from following the opinion there delivered. We find on investigation that the question has frequently arisen since that decision, and the courts have universally adopted the opinion of the Supreme Court as an authoritative construction of the statute in question. (First Nat. Bank of Kasson *v.* La Due, 39 Minn. 415 [1888]; Safford *v.* First Nat. Bank of Plattsburgh, 61 Vt. 373 [1889]; Planter's Loan & Sav. Bank *v.* Berry, 91 Ga. 264; 18 S. E. Rep. 137 [1893]; Freeman Mfg. Co. *v.* Nat. Bank of Republic, 160 Mass. 398 [1894]; Garner *v.* Second Nat. Bank of Providence, 66 Fed Rep. 369; Rosenheim R. E. Co. *v.* Southern Nat. Bank, 46 S. W. Rep. 1026 [Tenn. Ch. App. 1897]; Hazen & Quimby *v.* Lyndonville Bank, 70 Vt. 543 [1898]; Dennis *v.* First Nat. Bank of Seattle, 127 Cal. 453 [Jan. 1900].

The Revised Statutes were approved on the 22d day of June, 1874.

The provisions of section 5242, except the clause prohibiting
18 attachments, injunctions and executions, were a re-enactment of section 52 of the national currency act of 1864 (13 U. S. Stat. at Large, 115). The clause relating to attachments, injunctions and executions was first enacted by the act of Congress of March 3, 1873 (17 U. S. Stat. at Large, 603). By that act section 57 of the national currency act of 1864 was amended by adding thereto the clause in question in the following form: "*And provided further*, That no attachment, injunction or execution shall be issued against such association or its property before final judgment in any such suit, action or proceeding in any State, county or municipal court." Said section 57, at the time this amendment was engrafted thereon, read as follows: "*And be it further enacted*, That suits, actions and proceedings against any association under this act may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located, having jurisdiction in similar cases: *Provided*,

however, That all proceedings to enjoin the comptroller under this act shall be had in a circuit, district or territorial court of the United States held in the district in which the association is located." (13 U. S. Stat. at Large, 116.)

It appears clearly that after this amendment and prior to the adoption of the State statutes the State courts were absolutely prohibited from issuing an attachment, injunction or execution against a national bank prior to judgment regardless of its solvency or insolvency. The subsequent enactment of this clause in section 5242 was not intended to modify such prohibition. (Freeman Mfg. Co. *v.* Nat. Bank of Republic, *supra*; Planter's Loan & Sav. Bank *v.* Berry, *supra*; Pacific National Bank *v.* Mixter, *supra*.)

It is conceded that section 5242 has not been expressly repealed, but it is contended by the respondent that the clause under
19 consideration has been repealed by implication by section 4 of the act of Congress of July 12, 1882, (22 U. S. Stat. at Large, 162), which provides as follows: "That any association so extending the period of its succession shall continue to enjoy all the rights and privileges and immunities granted, and shall continue to be subject to all the duties, liabilities and restrictions imposed by the Revised Statutes of the United States and other acts having reference to national banking associations, and it shall continue to be in all respects the identical association it was before the extension of its period of succession: "*Provided, however*, That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."

This statute is not inconsistent with the clause of section 5242 prohibiting the issue of warrants of attachments, injunction and executions against national banks by the State courts before judgment. The act of 1882 was intended to prescribe the forum for litigations by and against national banks, and does not relate to provisional remedy to be had in such actions. It was designed to prescribe the place where and the courts in which such actions may be prosecuted, but it was not intended to regulate the proceedure in such actions when brought. (Raynor *v.* Pacific Nat. Bank, 93 N. Y. 371; Petri *v.* Com. Nat. Bank of Chicago, 142 U. S. 644; Freeman Mfg. Co. *v.* Nat. Bank of Republic, *supra*.)

20 These views lead to the conclusion that the order appealed from should be reversed, with ten dollars costs and disbursements, and the warrant of attachment vacated, with ten dollars costs.

Patterson and McLaughlin, JJ., concurred; Van Brunt, P. J., and O'Brien, J., dissented.

Order reversed with ten dollars costs and disbursements, and attachment vacated, with ten dollars costs.

Stipulation and Waiver.

Pursuant to section 3301 of the Code of Civil Procedure, we hereby stipulate that the foregoing is a true copy of the original summons, warrant of attachment, affidavits of Henry Van Reed and James W. M. Newlin, certificate of notary's appointment, notice of special appearance of defendant, notice of motion to vacate warrant of attachment, order denying motion to vacate warrant, memorandum opinion of Mr. Justice McAdam, notice of appeal to the appellate division, order of reversal, order allowing appeal to court of appeals, notice of appeal to court of appeals, and opinion of the appellate division, and of the whole thereof, and we hereby waive certification of the same.

Dated Sept. 15, 1902.

CARRINGTON & PIERCE,
Attorneys for Plaintiff.
MOORE, WALLACE & DUDLEY,
Attorneys for Defendant for the Purposes of This Motion Only.

21 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 20th day of January, in the year of our Lord one thousand nine hundred and three, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, Clerk.

Remittitur, January 21st, 1903.

22 HENRY VAN REED, Appellant,
against
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Respondent.

Be it remembered, that on the 22nd day of September in the year of our Lord one thousand nine hundred and two Henry Van Reed the appellant came here into the court of appeals, by Carrington &

Pierce his attorneys, and filed in the said court a notice of appeals and return thereto from the order of the appellate division of the supreme court in and for the first judicial department.

And The Peoples National Bank of Lebanon Pennsylvania the respondent afterwards appeared in said court of appeals by Moore Wallace and Dudley its attorneys.

Which said notice of appeals and the return thereto filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals this appeal having been submitted on the past of counsel for the appellant and signed by Mr. Percy S. Dudley of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein be, and the same hereby is affirmed with costs, and the first question certified answered in the affirmative and the second in the negative.

23 And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the appellate division first department there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed with costs and questions certified answered etc. as aforesaid. And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the appellate division in and for the first judicial department before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said appellate division before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the
State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, January 21, 1903.

I hereby certify that the preceding record contains a correct transcript of the proceedings on said appeal in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, Clerk.

24 At a term of the appellate division of the supreme court of the State of New York, held in and for the first judicial department, at the appellate division court house, in the county of New York, on the 20th day of February, 1903.

Present: Hon. Charles H. Van Brunt, P. J.; Hon. George L. Ingraham, Hon. Chester B. McLaughlin, Hon. Edward Hatch, Hon. Frank C. Laughlin, JJ.

HENRY VAN REED, Plaintiff,
against
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Defendant.

The above-named plaintiff having appealed to the court of appeals from the order of the appellate division, first department, dated December 13, 1901, and entered herein in the office of the clerk of the county of New York on the 4th day of January, 1902, reversing the order of the special term and vacating the attachment granted herein, with costs; and the said appellate division having certified to the court of appeals, for its determination, the following questions, viz:

"1. Is the defendant exempt from attachment before judgment "under section 5242 U. S. Revised Statutes?

"2. Are the rights claimed by the plaintiff, to attachment
25 "against the defendant before judgment, and to the juris-
"diction thereby acquired, preserved and given by sec. 4 of "the act of Congress of July 12, 1882?"

And the appeal as appears by the remittitur filed herewith having duly come on to be heard, and the appeal having been submitted on the part of counsel for the plaintiff and argued by Mr. Percy S. Dudley, of counsel for the defendant; and the court of appeals, after due deliberation had thereon, having ordered and adjudged that the order of the appellate division of the supreme court appealed from herein be affirmed, with costs, and that the first question certified be answered in the affirmative and the second in the negative; and the said court of appeals having remitted the record herein and the proceedings in said court to the appellate division, first department, there to be proceeded upon according to law.

Now, therefore, on filing the remittitur from said court of appeals, and on motion of Moore, Wallace & Dudley, attorneys for the defendant, appearing specially, it is

Ordered, that the judgment of the court of appeals aforesaid be, and it hereby is, made the judgment of this court, with costs and disbursements to the defendant, to be taxed by the clerk of the court.

26 Appellate Division of the Supreme Court, First Judicial Department, Clerk's Office, New York City.

HENRY VAN REED
against
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA.

I, Alfred Wagstaff, clerk of the appellate division of the supreme court in the first judicial department, do hereby certify that the foregoing copy order has been compared with the original thereof

filed in this office on the fourth day of March, 1903, and that the same is a correct transcript thereof, and of the whole of the said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New York, this sixth day of March, 1903.

[SEAL.] ALFRED WAGSTAFF, Clerk.

27 [Endorsed:] Supreme court, appellate division, first department. Henry Van Reed, plaintiff, against Peoples National Bank, of Lebanon, Pennsylvania, defendant. Remittitur. Moore, Wallace & Dudley, att'y- for def't, 26 Liberty St., N. Y. C. Filed March 7, 1903.

28 Court of Appeals of the State of New York.

HENRY VAN REED, Plaintiff-Appellant,
vs.
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Defendant-Respondent.

The plaintiff, Henry Van Reed, having filed his petition for a writ of error from the Supreme Court of the United States to the said court of appeals of the State of New York, and said petition having been this day duly allowed,

Now, it is *ordered* that the said Henry Van Reed file with the clerk of this court or clerk below a good and sufficient bond in the sum of two hundred & fifty dollars to the effect that if said Henry Van Reed shall prosecute his writ to effect, and if he fail to make his plea good, shall answer all costs, then this obligation to be void, otherwise to remain in full force and virtue, the said bond to be approved by this court.

Dated March 22, 1904.

ALTON B. PARKER,
Chief Judge of the Court of Appeals
of the State of New York.

29 [Endorsed:] Court of appeals Henry Van Reed plaintiff in error against Peoples National Bank of Lebanon Pennsylvania Copy of approval of bond Ray W. Jones 20 Broad St. New York.

30 Court of Appeals of the State of New York.

HENRY VAN REED, Plaintiff-Appellant,
vs.
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Defendant-Respondent.

Know all men by these presents, that the American Surety Company of New York, having an office and principal place of business at number 100 Broadway, in the city of New York, is held and firmly bound unto the Peoples National Bank of Lebanon Pennsylvania, in the sum of two hundred and fifty dollars, lawful money of the United States of America, to which payment well and truly to be made, the American Surety Company of New York binds itself, its successors and assigns firmly by these presents.

Sealed with its seal.

Dated the 19th. day of March, 1904.

Whereas, the above named Henry Van Reed has prosecuted a writ of error to the Supreme Court of the United States to review the judgment rendered in the above entitled action,

Now, therefore, the condition of this obligation is such, that if the above named Henry Van Reed shall prosecute his writ to effect and if he fail to make his plea good, shall answer all costs, then this obligation to be void, otherwise to remain in full force and virtue.

AMERICAN SURETY COMPANY
OF NEW YORK,
By DAVID B. SICKLES,
Vice-President.

Attest:
[SEAL.] CORTLANDT S. VAN RENSSELAER, Attorney.

137896. K. J.

31 STATE AND COUNTY OF NEW YORK, *ss:*

On this 19th day of March, 1904, before me personally appeared David B. Sickles, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickles

further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said corporation, that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said David B. Sickles, vice-president.

K. J. PEIRCEY,
[SEAL.] Notary Public, Kings County.

Certificate filed in New York county.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th. day of April, 1893, the following resolution was adopted and is still in force: "Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 19th. day of March, 1904.

[SEAL.] CORTLANDT S. VAN RENSSELAER, Attorney.

32 [Endorsed:] Court of appeals, State of New York. Henry Van Reed plaintiff in error against Peoples National Bank of Lebanon, Pennsylvania, defendant in error. Copy of bond on writ of error to Supreme Court of the United States. Approved as to form & sufficiency of surety March 22, 1904. Alton B. Parker, Ch. J.

33 Court of Appeals of the State of New York.

HENRY VAN REED, Plaintiff-Appellant,
vs.
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Defendant-Respondent.

To the Hon. Alton B. Parker, chief judge of the court of appeals of the State of New York:

The petition of Henry Van Reed respectfully represents:

That on the 6th of September, 1901, a warrant of attachment was issued in this action by the petitioner to recover two hundred and fifty dollars against the property of the defendant, a solvent national bank, organized under the laws of the United States, located and carrying on business in the State of Pennsylvania.

That the defendant moved, at special term to vacate the attachment upon the ground that it was issued against a national bank contrary to the statutes of the United States and that the motion was denied.

That upon appeal to the appellate division the order denying the motion was reversed and the motion granted, two of the justices dissenting, but that leave was given to appeal to the court of appeals of the State of New York, and the following questions were certified for decision:

"First. Is the defendant exempt from attachment before judgment under section 5242 of the United States Revised Statutes?

Second. Are the rights claimed by the plaintiff (this petitioner) to attachment against the defendant before judgment and to the
34 jurisdiction thereby acquired, preserved and given by section 4 of the act of Congress of July 12th, 1882?"

That on or about the 20th of January, 1903 the said court of appeals ordered that the order of the appellate division appealed from should be affirmed and that the first question certified should be answered in the affirmative and the second in the negative, and entered a final order and judgment therein in favor of the defendant and against petitioner's right specially set up and claimed under a statute of the United States and remitted the record herein and the proceedings in said court of appeals to the appellate division, first judicial department of the supreme court; and the said appellate division thereupon ordered that the judgment of the said court of appeals aforesaid be made the judgment of the supreme court; and on March 7th, 1903, the record, proceedings, papers and said orders were filed in the office of the county clerk of the county of New York.

That the said court of appeals of the State of New York is the highest court of the State of New York in which a decision can be had in this suit.

That in said final judgment petitioner respectfully represents that certain errors have been committed to the prejudice of your petitioner:

First. In affirming the order of the appellate division;

Second. In answering the first question in the affirmative;

Third. In answering the second question in the negative.

Wherefore, your petitioner prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the said court of appeals of the State of New York, and that a
35 transcript of the record, proceedings and papers duly certified may be sent to the Supreme Court of the United States.

Dated New York, March 2 1904.

HENRY VAN REED.

County of New York, } ss:
State of New York, }

Henry Van Reed the petitioner above named, being duly sworn, says the facts set forth in the foregoing petition are true.

HENRY VAN REED.

Sworn and subscribed before me this 2d day of March, 1904.

HARRY W. ACTON,
Commissioner of Deeds in and for the City of New York.

Order.

The writ of error prayed for in the foregoing petition is hereby allowed, and bond is fixed at $—, and all proceedings stayed.

Dated Albany, March 22, 1904.

ALTON B. PARKER,
Chief Judge of the Court of Appeals
of the State of New York.

36 Court of Appeals.

Henry Van Reed, Appellant,
v.
The People's National Bank of Lebanon, Pa., Respondent. } No. 6. C. M. O. P. G. H. V.

Appeal by permission from an order of the appellate division of the supreme court in the first judicial department reversing an order denying a motion to vacate an attachment and granting said motion.

On the 6th of September 1901 a warrant of attachment was issued in this action against the property of the defendant, a solvent na-

tional bank, organized under the laws of the United States, located and carrying on business in the State of Pennsylvania. The defendant moved at special term to vacate the attachment upon the ground that it was issued against a national bank contrary to the statutes of the United States, but the motion was denied. Upon appeal to the appellate division the order denying the motion was reversed and the motion granted, two of the justices dissenting, but leave was given to appeal to this court, and the following questions were certified to us for decision:

"First. Is the defendant exempt from attachment before judgment under section 5242 of the United States Revised Statutes?

"Second. Are the rights claimed by the plaintiff, to attachment against the defendant before judgment and to the jurisdiction thereby acquired, preserved and given by section four of the act of Congress of July 12th, 1882?

Carleton B. Pierce for appellant.

Percy S. Dudley for respondent.

VANN, J.:

The questions certified depend upon the construction of certain statutes of the United States, and such construction will be aided by investigating their history.

37 By section 53 of the national currency act, approved June 3rd, 1864, all transfers, assignments, etc., made in contemplation of insolvency by a banking association organized under the act, were declared void. Section 57 of the same act, after naming the courts, including various state courts, in which actions might be brought against national banks, continued as follows: "Provided, however, that all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located" (13 U. S. Stat. at Large, p. 116, ch. 106, §§ 52 & 57).

By the act of March 3rd, 1873, section 57 of said act was amended by adding thereto the following: "And provided further, that no attachment, injunction, or execution shall be issued against such association, or its property, before final judgment in any such suit, action, or proceeding in any State, county, or municipal court" (17 U. S. Stat. at Large, p. 603, ch. 269, § 2).

By the act to revise and consolidate the statutes of the United States in force on the first day of December 1873, approved June 22, 1874, section 52 of the original act and said amendment of section 57 were consolidated in section 5242 by attaching the latter at the end of the former, but not in the form of a proviso (U. S. R. S. § 5242).

The only other statute that is claimed to have any bearing upon the questions presented is an act to enable national banking associations to extend their corporate existence, approved July 12th, 1882 (22 U. S. Stat. at Large, p. 162, ch. 290). By section four of that act the rights and privileges, as well as the duties, and liabili-

ties of any banking association extending the period of its succession in accordance with the act, are preserved with this proviso: "That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than,
38 the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national-banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."

In 1880, the right to issue an attachment against the property of a solvent national bank was sustained by this court upon the ground that the prohibition of section 5242 applies only to insolvent corporations or those about to become so. (Robinson *v.* National Bank of Newburne, 81 N. Y. 385, 392.)

In 1883, the right to issue an attachment against the property of an insolvent national bank was denied by this court. It was further held that section 5242 was not repealed by the act of July 12th, 1883, because the latter relates to the jurisdiction of courts to entertain suits and the former to particular proceedings in such suits. (Raynor *v.* Pacific National Bank, 93 N. Y. 371.)

In 1887, the subject was considered by the Supreme Court of the United States. (Pacific National Bank *v.* Mixter, 124 U. S. 721.) In that case it appeared that a national bank became embarrassed on the 20th of November, 1881 " and was placed in charge of a bank examiner, in whose control it remained until March 18th, 1882, when its doors were opened for business with the consent of the Controller of the Currency." In March and April 1881, while it was a going concern and so far as appears solvent, attachments were issued against its property and it was held that they were void. The broad doctrine was laid down by Chief Justice Waite, with whom all the justices concurred, that an attachment could not issue out of a State court against the property of a national banking association whether solvent or insolvent. The court said: " The fact that the amendment of 1873 in relation to attachments and injunctions in State courts was made a part of § 5242 shows the opinion of the revisers and of Congress that it was germain to the other provision incorporated in that section, and was intended as an aid to
39 the enforcement of the principle of equality among the creditors of an insolvent bank. But however that may be, it is clear to our minds that, as it stood originally as part of § 57 after 1873, and as it stands now in the Revised Statutes, it operates as a prohibition upon all attachments against national banks under the authority of the State courts. That was evidently its purpose when first enacted, for it was part of a section which, while providing for suits in the courts of the United States or of the State, as the plaintiff might elect, declared in express terms that if the suit was begun

in a State court no attachment should issue until after judgment. The form of its re-enactment in the Revised Statutes does not change its meaning in this particular. It stands now, as it did originally, as the paramount law of the land that attachments shall not issue from State courts against national banks, and writes into all State attachment laws an exception in favor of national banks. Since the act of 1873, all the attachment laws of the State must be read as if they contained a provision in express terms that they were not to apply to suits against a national bank." (P. 726.)

It was also held that the act of July 12th, 1882, did not repeal the prohibition by which the remedy of attachment is taken away altogether, so that it "cannot be used under any circumstances."

In 1889, the subject was considered by the court of appeals for the third time in an action in which an attachment had been issued against a national bank on the 18th of June 1887 and a receiver of the bank was appointed nine days later. The special term denied the motion to vacate, but the general term reversed and vacated the attachment. Upon appeal, this court affirmed "on the authority of Pacific National Bank *v.* Mixter," *supra.* (Bank of Montreal *v.* Fidelity National Bank, 17 N. Y. St. Rep. 86; 112 N. Y. 667.)

Assuming that the banking association in that case was insolvent when the attachment was granted, still it is to be observed that this court did not cite its own *Raynor* case which involved an insolvent bank, as the authority for its judgment, but cited the *Mixter* case, in which it was held that an attachment against a national bank whether solvent or insolvent is void.

We think, and such is the recollection of Judge Gray, the only member of the present court who participated in that decision, that it was the intention of this court to yield its previous views to those expressed by the Supreme Court of the United States upon the subject.

All the courts of last resort in the different States, that have passed upon the question, have held that the prohibition of the Federal statutes applies to all national banks, regardless of their pecuniary condition. (Freeman Manufacturing Co. *v.* National Bank of the Republic, 160 Mass. 398; Planters' Loan & Savings Bank *v.* Berry 91 Ga. 264; First National Bank of Kasson *v.* La Due, 39 Minn. 415; Dennis *v.* First National Bank of Seattle, 127 Cal. 453; Stafford *v.* First National Bank of Plattsburg, 61 Vt. 373; Rosenhein Real Estate Co. *v.* Southern National Bank, 46 S. W. Rep. (Tenn.) 1026) The same conclusion was reached by the circuit court of the United States for the southern district of New York. (Garner *v.* Second National Bank of Providence, 66 Fed. Rep. 369.)

The power to create national banks carries with it the power to protect them by conferring special rights, privileges and immunities. In 1873 Congress evidently thought that the efficiency of these institutions might be impaired if attachments were issued out of the State courts against their property, and it, therefore, prohibited such writs, among others, altogether. The only question be-

fore us is whether that is still the effect of the acts of Congress as they now stand. While the use of the words, "such association" in section 5242 would justify the construction contended for by the appellant that the prohibition is confined to associations which have committed an act of insolvency, the court of last resort for the construction of Federal statutes has decided the other way, and we are bound by its conclusion. (Pacific National Bank *v.* Mixter, *supra.*)

We do not think the opinion in that case is obiter so far as
41 it applies to a solvent bank, for as we understand the statement of facts the Pacific national bank was solvent when the attachments were issued against it. While it became embarrassed six or seven months later, it does not appear that it was insolvent or had committed an act of insolvency, or had done anything in contemplation of insolvency, when the attachments were issued or levied. The chief justice obviously did not write an elaborate opinion to show that an attachment could not issue against an insolvent bank, for that was not open to question. It has always been conceded that the statute at least prohibits an attachment against an insolvent bank, but the question considered and decided was whether an attachment could be issued against a solvent bank. That was a live question still open in that court and there is no suggestion, either in the statement of facts or the opinion, indicating that the court regarded the question before it as different from the question now before us. The first question certified to us should, therefore, be answered in the affirmative.

The second question involves the effect of the act of July 12th, 1882, but this requires no discussion as it has already been held by the Supreme Court of the United States, as well as by ourselves, that said act did not repeal the earlier acts of Congress prohibiting attachments against national banks. (Pacific National Bank *v.* Mixter, *supra;* Raynor *v.* Pacific National Bank, *supra.*)

42 The argument is made that if the defendant had been a foreign State bank with funds here, our courts could have acquired jurisdiction *in rem* through the process of attachment, and that hence the same jurisdiction exists over the property of a foreign national bank situated in this State. This construction of the later act, however, would violate the spirit of all the acts relating to the subject when read together. We agree with the appellate division that "the act of 1882 was intended to prescribe the forum for litigations by and against national banks, and does not relate to provisional remedies to be had in such actions. It was designed to prescribe the place where and the courts in which such actions may be prosecuted, but it was not intended to regulate the procedure in such actions when brought."

Nor, we might add, was it intended to so regulate the method of commencing an action as to enable a State court to acquire jurisdiction over the property of a national bank, without acquiring juris iction of the bank itself.

We think that the order appealed from should be affirmed with

costs; that the first question certified should be answered in the affirmative and the second in the negative.

43 [Endorsed:] C. M. O. P. G. H. V. No. 6 Court of appeals Henry Van Reed, app'll't, *v.* The People's National Bank of Lebanon, Pa. resp't. Opinion by Vann, J.

44 Court of Appeals of the State of New York.

HENRY VAN REED, Plaintiff-Appellant,
vs.
THE PEOPLES NATIONAL BANK OF LEBANON, PENNSYLVANIA, Defendant-Respondent.

Assignment of Errors.

Now, March 2, 1904, comes the above plaintiff and files herewith his petition for a writ of error, and says that there are errors in the record and proceedings of the above entitled case, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignment:

I. In ordering that the order of the appellate division of the supreme court of the State of New York, granting the motion to vacate the attachment, be affirmed:

II. In answering the first question: "Is the defendant exempt from attachment before judgment under section 5242 of the United States Revised Statutes?" in the affirmative:

III. In answering the second question: "Are the rights claimed by the plaintiff to attachment against the defendant before judgment and to the jurisdiction thereby acquired, preserved and given by section 4 of the act of Congress of July 12th., 1882," in the negative.

For which errors the plaintiff, Henry Van Reed, prays that the order or judgment of the court of appeals of the State of New York, dated January 20. 1903, be reversed, and a judgment entered for the plaintiff, Henry Van Reed, and for costs.

RAY W. JONES,
Attorney for Plaintiff in Error.

45 [Endorsed:] Supreme Court of the United States. Henry Van Reed plaintiff in error against People's National Bank of Lebanon Pennsylvania defendant in error Assignment of errors Rec'd M'ch 24, 1904 Ray W. Jones 20 Broad St. New York.

46 UNITED STATES OF AMERICA, *ss:*

To the Peoples' National Bank of Lebanon, Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office in and for the county of New York, wherein Henry Van Reed is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Alton B. Parker, chief judge of the court of appeals of the State of New York, this 22nd day of March, in the year of our Lord one thousand nine hundred and four.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of the
State of New York.

47 [Endorsed:] Supreme Court of the United States Henry Van Reed plaintiff in error against Peoples National Bank of Lebanon Pennsylvania defendant in error Citation Rec'd M'ch 24 1904 Ray W. Jones 20 Broad St. New York

On this 24th. day of March, in the year of our Lord one thousand nine hundred and four, personally appeared Frank Odell before me, the subscriber, John S. Wise Jr. a notary public in and for the county of New York and makes oath that he delivered a true copy of the within citation to Percy S. Dudley of the firm of Moore, Wallace & Dudley, attorneys for the Peoples' National Bank of Lebanon, Pennsylvania, at No. 26 Liberty street, borough of Manhattan, New York city.

FRANK ODELL.

Sworn to and subscribed the 24th. day of March, A. D. 1904.

[Seal of John S. Wise, Jr., Notary Public, New York Co.]

JNO. S. WISE, JR.

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of New York before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had

in the said suit between Henry Van Reed, plaintiff-appellant, and The Peoples' National Bank of Lebanon, Pennsylvania, defendant-respondent, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of
49 a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Henry Van Reed, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of March, in the year of our Lord one thousand nine hundred and four.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York, in the
Second Circuit.

Allowed by

ALTON B. PARKER,
Chief Judge of the Court of Appeals
of the State of New York.

50 [Endorsed:] Supreme Court of the United States. Henry Van Reed, plaintiff in error, against Peoples' National Bank of Lebanon, Pennsylvania, defendant in error. Writ of error. Received M'ch 24, 1904. Ray W. Jones, 20 Broad St. New York.

51 STATE OF NEW YORK, }
County of New York. }

Clerk's Office of the Supreme Court of the State of New York for the County of New York.

I, Thomas L. Hamilton, clerk of the county of New York and of the supreme court of the State of New York for the said county of New York by virtue of the annexed writ of error which was served upon me on the 24th day of M'ch 1904 and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 29 inclusive contain a true and complete transcript of the record and proceedings had in said court in the suit Henry Van Reed *vs.* The Peoples National Bank of Lebanon, Pennsylvania, mentioned in said writ of error as the same remain of record and on file in my office and that annexed hereto *is* the petition for said writ of error the citation to the writ in error with proof of service of the same the said writ of error served upon me (the bond and approval thereon, and the assignments of errors) with a copy of the opinion of the court of appeals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at my office in the city and county of New York on the 26th day of March 1904.

[Seal of New York.]

THOS. L. HAMILTON, Clerk.

Endorsed on cover: File No. 19,304. New York court of appeals. Term No. 229. Henry Van Reed, plaintiff in error, *vs.* The Peoples National Bank of Lebanon, Pennsylvania. Filed April 21st, 1904. File No. 19,304.